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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. _____

THE PHILADA HOME FUND, INC.
c/o The Central Trust Company
Fourth and Vine Streets
Cincinnati, Ohio 45202,

71-805

Appellant,

vs.

BOARD OF REVIEW
BUREAU OF EMPLOYMENT SERVICES
145 South Front Street
P. O. Box 1618
Columbus, Ohio 43215,

Appellee.

On Appeal from the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

THE PHILADA HOME FUND, INC.
c/o The Central Trust Company
Fourth and Vine Streets
Cincinnati, Ohio 45202

MURRAY SEASONGOOD
1700 Central Trust Tower
Cincinnati, Ohio 45202

ATTORNEY FOR APPELLANT

PAXTON & SEASONGOOD
CLYDE M. ABBOTT
JON HOFFHEIMER

OF COUNSEL

JAMES E. UPRICHARD
145 So. Front Street
Columbus, O. 45215

ATTORNEY OF RECORD
FOR APPELLEE

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. _____

THE PHILADA HOME FUND, INC.
c/o The Central Trust Company
Fourth and Vine Streets
Cincinnati, Ohio 45202,

Appellant,

vs.

BOARD OF REVIEW,
BUREAU OF EMPLOYMENT SERVICES
145 South Front Street
P. O. Box 1618
Columbus, Ohio 43215

Appellee.

Appeal from the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

Appellant files this, its jurisdictional statement, pursuant to the Rules of the U. S. Supreme Court.

(a) There are no official printed reports of opinions in the state courts. The Ohio Supreme Court dismissed, on September 22, 1971, the appeal as of right in case 71-426 filed in that Court June 24, 1971, without opinion, on the ground no substantial constitutional question was

involved. It overruled on the same date the motion to certify its record.

(b) The grounds on which the jurisdiction of this Court is invoked are:

(i) The proceedings were initiated by an appeal to the Common Pleas Court of Franklin County, Ohio, from the order of the Board of Review of the Ohio Bureau of Employment Services dated August 20, 1968, affirming the Administrator's decision that Philada Home Fund, Inc. (to be referred to as "Philada"), was not entitled to exemption from payment of unemployment compensation under Sections 4141.01(A) and 4141.01(B)(2)(h), Title 41, Ohio Revised Code, and ruling it was not a corporation "organized and operated exclusively for ...charitable, ...purposes", with "activities... confined exclusively to the rendering of service ...for its...charitable, ...purposes"; and that the statutes requiring it to pay unemployment

compensation were not invalid under the Constitutions of Ohio and of the United States. The Common Pleas Court had entered similar judgment finding against Philada.

The statute pursuant to which Philada's appeal is taken is 28 U.S.C. Sec. 1257(2); and a substantial constitutional question is presented, namely, whether the Ohio statute involved, as interpreted by the Ohio Supreme Court and the Court of Appeals, is repugnant to Section 1 of the Fourteenth Amendment of the United States Constitution as denying appellant the equal protection of the laws and the deprivation of its property without due process of law.

(ii) The judgment of dismissal for want of a substantial constitutional question by the Ohio Supreme Court was entered September 22, 1971. No application for rehearing has been made. The notice of appeal to this Court from the above judg-

ment was filed October 6, 1971, in the Ohio Supreme Court, and (as perhaps possessed of the record) in the Court of Appeals for Franklin County, and the Common Pleas Court of that County. The Clerks of the Ohio Supreme Court and of the Common Pleas Court were requested to transmit and have sent to this Court portions of the record in their possession.

(iii) This appeal is filed pursuant to 28 U.S.C. Sec. 1257(2).

(iv) Cases believed to sustain the jurisdiction are: Reed, Appellant v. Cecil R. Reed, Administrator, etc., on appeal from the Supreme Court of Idaho, (decided Nov. 22, 1971, No. 70-4, not yet officially published but appearing in 40 U.S. Law Week, No. 19 (Nov. 23, 1971), p. 4013) which is the latest opinion of this Court supporting jurisdiction where the validity of the statute of a state was involved and

appeal was from the statute sustaining its validity as against the contention that such statute was invalid as denying rights under the Fourteenth Amendment. See Standard Oil Co. v. Johnson, 316 U.S. 481 (1942); Fleischmann v. Flowers, 25 Ohio St. 2d 131 (1971).

(v) The Statute involved, asserted to be constitutionally invalid, is Section 4141.01(B)(2)(h), Revised Code of Ohio. Relevant portions are in the Appendix. The volume and page where it may be found is in Title 41 of the Revised Code of Ohio, Page's Edition, 1970 Supplement, pages 61 and 62.

Copies of the Ohio Supreme Court judgment of June 24, 1971, case 71-426, and notice of appeal dated September 22, 1971, from that judgment and portions of opinions and briefs in said Court, and briefs showing constitutional questions asserted in each court, appear substantially italicized in the Appendix. (In Ohio, the

syllabus is the law of the case. See Cassidy v. Glossip, 12 Ohio St. 2d 17 (1967) and Perkins v. Benquet Consol. Mining Co., 342 U.S. 437 (1952)).

The decision of the Court of Appeals of Franklin County rendered May 11, 1971, reproduced as an Exhibit of the Appendix, is elaborate and contains necessary references to quotations from the statutes and decisions involved.

(c) The questions presented by this appeal are as stated in the Notice of Appeal to this Court in the Appendix, Exhibit A, III.

(d) and (e) The circumstances under which Philada seeks the same constitutional statutory exemption from having to pay unemployment charges granted to other institutions like it in overall purposes and operation (except that, unlike Philada, some of these are conducted for persons not needy but affluent enough to pay almost all of the charges involved and make a substantial deposit), are: it

is an Ohio corporation not for profit; its purposes and operations are conducted solely for a truly charitable purpose, as that term is understood in modern times and law; it furnishes, at a loss, to resident couples and single persons ground floor apartments specially designed. Such persons must be not merely "aged" or "needy", but must have both of these attributes. This arrangement promotes therapy of desirable independence plus the safety and well-being of the inhabitants. The charges in force now and from the beginning are $60.00 for individuals, $75.00 for couples. Receipts from rentals are far below cost of operation and have been maintained despite ever rising costs, with no increase in amounts charged. All receipts are devoted only to cost and operations of the Home. Prevalent rentals in similar homes, when rented for profit, if there are any so equipped, would be at least twice Philada's charge. The asserted exactions for unem-

ployment compensation have not been paid and are for each of the years beginning with 1966 and thereafter.

The conclusive meaning of the state statute involved, and sustained below as to its constitutionality, is that Philada is non-charitable and not exempt from payments, whereas other institutions for the aged, not necessarily "needy aged", (and with residents who are often persons affluent enough to pay almost the entire cost of their living, food, etc. and who are able to make down payments sometimes of $10,000 or $25,000) are exempt from the payment of unemployment compensation charges irrespective of financial need.

How and when the constitutional questions involved were sufficiently raised, passed on and appealed from in the Courts and the Board of Review is shown by documents listed in the Appendix.

These, we trust, sufficiently show that the questions as submitted and passed on include, here and below, not only whether the statute involved itself is unconstitutional as a deprival of property but also whether it is a denial of the equal protection of the laws. The facts, arguments and conclusions shown are substantially identical, whether treated as attacks, based on the due process clause or the equal protection portion of Section 1 of the Fourteenth Amendment. Also, the facts and arguments show that the case is one of such great general importance that they merit consideration on certiorari.

Appellant recognizes that the meaning of the statute involved is what it is determined to be by the highest available courts of the state. It submits, however, that the statute 4141.01(B)(2)(h), Ohio Revised Code, should be interpreted in light of the Carmelite Sisters, St. Rita's Home v. Board

of Review, 18 Ohio St. 2d 41 (1969) case wherein the second paragraph of the syllabus reads as follows:

> "2: A corporation not for profit which operates a home caring for the aged and infirm is not an 'employer', under Section 4141.01 (A), Revised Code, liable to contribute to the Unemployment Compensation Fund";

it further submits that the same statute provides conclusively that Philada, created for and having equal or more charitable purposes, is not an employer bound to contribute to the same fund.

Philada argues therefore that this statute thus read is so egregiously baseless, arbitrary and inexcusably discriminatory that there has arisen (as stated in dissenting opinion in the Philada 1966 tax case, 5 O.S. 2d, 135, 140) a question of great public and general interest and importance worthy of consideration by the Court and that the

statute, as interpreted, denies Philada both of the equal protection of the law and of its property under Section 1 of the Fourteenth Amendment.

Respectfully submitted,

THE PHILADA HOME
FUND, INC.

By Murray Seasongood
Murray Seasongood

ATTORNEY FOR APPELLANT

PAXTON & SEASONGOOD
CLYDE M. ABBOTT
JON HOFFHEIMER

OF COUNSEL

APPENDIX

Ex. A

IN THE COURT OF APPEALS OF
FRANKLIN COUNTY, OHIO

THE PHILADA HOME FUND, INC.
c/o The Central Trust Company
Fourth and Vine Streets
Cincinnati, Ohio 45202

Appellant,

Filed in Ohio Supreme Court, Court of Appeals, and Common Pleas Court

No. 71-7

vs.

BOARD OF REVIEW,
BUREAU OF EMPLOYMENT SERVICES
145 South Front Street
P. O. Box 1618
Columbus, Ohio 43215,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

I. Notice is hereby given that The Philada Home Fund, Inc. (an Ohio non-profit corporation created in 1965), the appellant above named, hereby appeals to the United States Supreme Court from the judgment of the Supreme Court of Ohio entered September 22, 1971, dismissing, sua sponte, appellant's appeal from the judgment rendered May 11, 1971, by the Court of Appeals of Franklin County, Ohio, on the ground that no substantial constitutional question exists in said appeal.

This appeal is taken pursuant to 28 U.S.C.A. Section 1257 (2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript all papers and information which may be requested of him by the appellant as necessary to be forwarded to the United States Supreme Court.

III. The following questions are presented by this appeal:

1(a) Does Section 4141.01 (B)(2)(h) of the Ohio Revised Code, as interpreted by the Ohio courts, deprive The Philada Home Fund, Inc. (a non-profit corporation which provides a home for the needy and aged and which charges its residents less than the costs of operation of the home as a charitable corporation) of its property without due process of law granted to it by the Fourteenth Amendment to the United States Constitution by categorizing The Philada Home Fund, Inc. as a non-exempt employer that must pay Ohio Unemployment Compensation charges?

1(b) Does Section 4141.01 (B)(2)(h) of the Ohio Revised Code, as interpreted by the Ohio courts, deprive The Philada Home Fund, Inc. (a non-profit corporation which provides a home for the needy and aged and which charges its residents less than the costs of operation of the home as a charitable corporation) of its property without the equal protection of the laws granted to it by the Fourteenth Amendment to the United States Constitution by categorizing The Philada Home Fund, Inc. as a non-exempt employer required to pay Ohio Unemployment Compensation

charges while exempting other homes for the aged, including some which house residents who are not needy and which render essential charitable services to their residents comparable to those furnished by Philada?

2(a) Do Sections 5709.12 (as amended effective May 31, 1968), 5709.12.1 and 5709.13 of the Ohio Revised Code, as interpreted and relied on by the Ohio Courts to deny exemption to Philada and to deprive The Philada Home Fund, Inc. (a non-profit corporation which provides a home for the needy and aged and which charges its residents less than the costs of operation of the home as a charitable corporation) of its property without due process of law granted to it by the Fourteenth Amendment to the United States Constitution by categorizing The Philada Home Fund, Inc. as an organization not organized and operated exclusively for charitable purposes?

2(b) Do Sections 5709.12 (as amended effective May 31, 1968), 5709.12.1 and 5709.13 of the Ohio Revised Code, as interpreted by the Ohio Courts, deprive The Philada Home Fund, Inc. (a non-profit corporation which provides a home for the needy and aged and which charges its residents less than the costs of operation of the home as a charitable corporation) of its property without the equal protection of the laws granted to it by the Fourteenth Amendment to the United States Constitution by categorizing The Philada Home Fund, Inc. as an organization

not organized and operated exclusively for charitable purposes?

s/ Murray Seasongood
Murray Seasongood

s/ Jon Hoffheimer
Jon Hoffheimer

Attorneys for The Philada Home Fund, Inc., Appellant
17th Floor Central Trust Tower
Fourth and Vine Streets
Cincinnati, Ohio 45202
(513) 381-4188

s/ Paxton & Seasongood
PAXTON & SEASONGOOD
Of Counsel

PROOF OF SERVICE

I, Jon Hoffheimer, an attorney in the office of Paxton & Seasongood, attorneys of record for The Philada Home Fund, Inc., appellant herein, depose and say that on the 6th day of October, 1971, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on Board of Review, Bureau of Employment Services, appellee herein, by mailing the same to the offices of James E. Uprichard, Jr., counsel of record for said Board of Review, located at 145 South Front Street, Columbus, Ohio 43215, Attorney for Appellee.

s/ Jon Hoffheimer
Jon Hoffheimer

Subscribed and sworn to before me, at Cincinnati, Ohio, this 6th day of October, 1971.

s/ Robert W. Crawford
Robert W. Crawford

Ex. B

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

19 71 TERM

To wit: September 22, 1971

The Philada Home Fund, Inc.,

Appellant,

vs.

Board of Review, Ohio Bureau of Employment Services,

Appellee.

No. 71-426

APPEAL FROM THE COURT OF APPEALS

for FRANKLIN *County*

This cause, here on appeal as of right from the Court of Appeals for FRANKLIN *County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.*

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for FRANKLIN *County for entry.*

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ..... day of ..... 19 .....

..... Clerk

..... Deputy

Ex. C

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

19 71 *TERM*

To wit: September 22, 1971

The Philadelphia Home Fund, Inc.,
Appellant,

No. 71-426

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS

vs.

Board of Review, Ohio Bureau of Employment Services,
Appellee.

for FRANKLIN *County*

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Paxton & Seasongood

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ..... day of ..... 19.....

..... *Clerk*

..... *Deputy*

Ex. D

COURT OF APPEALS

FRANKLIN COUNTY, OHIO

THE PHILADA HOME FUND, INC. c/o The Central Trust Company Fourth and Vine Streets Cincinnati, Ohio 45202,	:	Ct. App. No. 71-7 S. Ct. No. 71-426
Appellant,	:	
-vs-	:	
BOARD OF REVIEW OHIO BUREAU OF EMPLOYMENT SERVICES 145 South Front Street P. O. Box 1618 Columbus, Ohio 43216,	:	NOTICE OF APPEAL FROM THE COURT OF APPEALS
Appellee.	:	

Appellant, The Philada Home Fund, Inc., hereby gives notice of its appeal on questions of law to the Supreme Court of Ohio from the decision of the Court of Appeals of Franklin County, Ohio, and the Entry of Affirmance dated May 24, 1971.

This case did not originate in the Court of Appeals, but does involve substantial questions

under the Constitution, as amended, of the United States, including the Fifth Amendment and Section 1 of the Fourteenth Amendment, and the Constitution of the State of Ohio, including Sections 1 and 19 of Article I.

s/ Murray Seasongood
Murray Seasongood

s/ Clyde M. Abbott
Clyde M. Abbott

s/ Jon Hoffheimer
Jon Hoffheimer

PAXTON & SEASONGOOD
17th Floor, Central Trust Tower
Fourth and Vine Streets
Cincinnati, Ohio 45202
381-4188

CERTIFICATE OF SERVICE

I certify that on the 23rd day of June, 1971, I mailed a copy of the foregoing Notice of Appeal to James E. Uprichard, Jr., Esq., 145 South Front Street, Columbus, Ohio 43216, Attorney for Appellee.

s/ Jon Hoffheimer
Jon Hoffheimer

Ex. E

COURT OF APPEALS
FRANKLIN COUNTY, OHIO

THE PHILADA HOME FUND, INC., :

Appellant; : No. 71-7

-vs- : ENTRY OF AFFIRMANCE

BOARD OF REVIEW, BUREAU OF EMPLOYMENT SERVICES, :

Appellee. :

On consideration of the record, the Assignments of Error, a certified transcript of the record of the proceedings before the Board of Review herein, together with a certified copy of all exhibits entered into evidence, and the briefs and oral arguments of Appellant and Appellee in this appeal on questions of law, the Court finds that there was no error in the judgment of the Court of Common Pleas or of the Board of Review of the Ohio Bureau of Employment Services prejudicial to the rights of Appellant.

WHEREUPON, the Court finds, in accordance with its opinion filed in this matter on May 11, 1971, that the judgment of the Court of Common Pleas is neither contrary to existing statutory and case law, unreasonable, unconstitutional under the Ohio and United States Constitutions, as amended, nor against the manifest weight of the evidence.

WHEREFORE, it is ordered that the judgment of the Court of Common Pleas be and it hereby is affirmed.

To all of which Appellant accepts.

The Court certifies that there was reasonable cause for the Appeal herein.

s/ Jon Hoffheimer
Jon Hoffheimer
PAXTON & SEASONGOOD
Attorneys for Appellant

s/ James E. Uprichard, Jr.
James E. Uprichard, Jr.
Attorney for Appellee

s/ P. J. Troop
P. J. Troop

s/ J. Strausbaugh
J. Strausbaugh

Ex. F

IN THE COURT OF APPEALS OF
FRANKLIN COUNTY, OHIO

The Philada Home Fund, Inc.,
c/o The Central Trust Company,
Fourth and Vine Streets,
Cincinnati, Ohio 45201,

Appellant-Appellant,

v. : No. 71-7

Board of Review,
Ohio Bureau of
Employment Services,

Appellee-Appellee.

DECISION

Rendered on May 11, 1971

PAXTON & SEASONGOOD,
MR. JON HOFFHEIMER, of Counsel,
Central Trust Tower,
Cincinnati, Ohio 45202,
For Appellant-Appellant.

MR. WILLIAM J. BROWN, Attorney General,
MR. GUST PETER NIARCHOS, Assistant,
145 South Front Street,
Columbus, Ohio,
For Appellee-Appellee.

WHITESIDE, J.

This is an appeal upon questions of law from a judgment of the Franklin County Court of Common Pleas, affirming an order of the Board of Review, Ohio Bureau of Employment Services, holding that The Philada Home Fund, Inc., appellant herein, is an employer required to make contributions to the State Unemployment Compensation Fund pursuant to R. C. 4141.25.

Appellant has assigned four assignments of error contending that the judgment of the Court of Common Pleas is contrary to existing statutory and case law, is unreasonable, is unconstitutional, and is against the manifest weight of the evidence.

Basically the contention of appellant is that it is not an employer as defined in R. C. 4141.01 (A) because the services of its employees are excluded from being employment by R. C. 4141.01 (B)(2)(h) which expressly excludes from "employment":

> "Service performed in the employ of a corportation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefits of any private shareholder or individual, and the activities of which are confined exclusively to the rendition of service, or the production of commodities, for its respective religious, charitable, scientific, literary, or educational purposes;"

Contributions to the State Unemployment Compensation Fund do not constitute a tax for general purposes, but to the extent that they are a tax, constitute a tax for a special purpose. All such contributions are paid into the Unemployment Compensation Fund and may be used only to pay benefits and refunds under the State Unemployment Compensation Law. R. C. 4141.09. The exemption of an employer from making contributions to the Unemployment Compensation Fund effectively shifts at least a major portion of the burden that would otherwise be borne by such exempted employer to the employees of such employer who are, because of such exemption, denied the benefits of unemployment compensation in the event of unemployment.

Despite this difference, the Supreme Court of Ohio has indicated that exemptions from making contributions to the State Unemployment Compensation Fund are to be determined by the same general tests that apply to exemptions from general taxation. Carmelite Sisters, St. Rita's Home, v. Board of Review (1969), 18 Ohio St. 2d 41. Compare: Ohio Children's Society v. Porterfield (1971), 26 Ohio St. 2d 30. Likewise, R. C. 4141.01 (B)(2)(h) indicates a legislative intent that the exemption of charitable organizations from making contributions to the State Unemployment Compensation Fund be at least as extensive as exemptions from general taxation.

The Supreme Court of Ohio has previously determined that the appellant is not exempt from taxation under R. C. 5709.12. The Philada Home Fund v. Board of Tax Appeals (1966), 5 Ohio St. 2d 135. The syllabus of that case reads as follows:

"Real property owned by a non-profit charitable corporation the stated purpose of which is to secure and operate resident apartments for aged and needy persons is not exempt from taxation under Section 5709.12, Revised Code, even though it is shown that the rent intended to be charged is at or below cost, and in no event to result in a profit, and that it is expected that some persons unable to pay the full rental will be assisted by subventions from corporate funds."

Appellant contends that the prior case is not controlling in light of the decision in the Carmelite case, supra, which distinguished the prior Philada Home Fund case. Appellant further contends that the prior Philada case can be distinguished because it was decided before the home was put in operation, and the record therein did not indicate the actual operation of the home.

Appellant operates The Philada Home, which consists of 21 self-contained apartments specially designed for the convenience and safety of aged and needy residents. One unit is occupied by the manager, 8 are occupied by married couples, and 12 by single residents. 14 additional units were under construction.

The special features of the apartments include an alarm system in the bathroom, whereby a resident can call the manager for help if it be needed, an oxygen tank in the manager's office, bathtubs with grab bars, high faucets and seats, sinks constructed so that a wheelchair can be wheeled up to and under them, bathroom doors wide

enough to accommodate a wheelchair, and raised electrical outlets so that residents do not have to stoop.

Residency is limited to persons at least 60 years of age who have no more than $3,500 annual income and $7,000 in assets, if single, and no more than $5,000 annual income and $10,000 in assets, if a couple. The actual average age the residents is 71 years, and the average annual income per resident is $1,605, and the average assets of the residents are $5,405. Monthly rental charges are $75 for a couple, and $60 for a single person; however, a few residents are charged less because of need. The general manager is an unlicensed practical nurse, who performs first aid and some care for the residents. The rents charged do not cover the cost of operation. In 1967, the rental income was $16,551.90, whereas the cost of operation was $36,305.36, including $13,703.74 for depreciation. Each resident is required to furnish a doctor's certificate that he is physically and mentally able to manage housekeeping in the apartments. If a resident becomes unable to do so, he is required to move.

The Carmelite case, supra, involved a home for indigent and aged men and women over 65 years of age, but operated on a break-even budget, providing meals, dietary and other treatment and care for its residents, and having a doctor on call at all times, and a registered nurse and two practical nurses on its staff. The second paragraph of the syllabus of the Carmelite case reads as follows:

"A corporation not for profit which operates a home caring for the aged and infirm is not an 'employer,' under Section 4141.01 (A), Revised Code, liable to contribute to the Unemployment Compensation Fund."

The Supreme Court distinguished the prior Philada Home Fund case in the following language, at page 44:

"In Philada Home Fund v. Board of Tax Appeals, supra, apartments built and operated by a non-profit corporation were offered for rent to 'aged and needy self-respecting persons of good character,' with preference given to couples over individuals. No services were provided for the residents of the Philada Home, other than those provided to a lessee of any age in any apartment building. It does not appear that the Philada Home had a doctor on call at all times, or a registered nurse and two practical nurses on its staff as does the Home in the instant case. Nor did the Philada Home provide meals, dietary or other treatment and care for its residents. In summary, the Philada Home was not used exclusively for charitable purposes since it did not care for its residents in ways they could not care for themselves."

The Supreme Court, in the Carmelite case, may have had in mind a "home for the aged" as defined by R. C. 5701.13, although no reference to that section is contained in the decision. To qualify

as a "home for the aged" certain services must be provided as specified in R. C. 5701.13 (D) as follows:

> "The following services are available, as needed by residents of the home, and shall be provided, at or below reasonable cost, for the life of each resident without regard to his ability to continue payment for the full cost thereof:
>
> "(1) Lodging;
> (2) Prepared food;
> (3) Custodial care;
> (4) Medical and nursing care;
> (5) Such additional services as may be required for the full care of the resident.
>
> "A service is provided, within the meaning of this division, if the home pays, or guarantees the payment, for all reasonable costs of securing such service on behalf of each resident and it can be secured without unreasonable inconvenience to the residents.
>
> "Exemption from taxation shall be accorded, on proper application, only to those homes which meet the standards and provide the services specified in this section."

Appellant does not provide guaranteed life care, prepared food, or medical and nursing care. In any event, we are unable to distinguish the operative facts herein from those set forth in the

prior Philada Home Fund case, supra.

The Carmelite case, supra, overruled the cases of In re Exemption of Real Property From Taxation by Lutheran Senior City (1967), 9 Ohio St. 2d 151, and Crestview, Inc., v. Donahue (1968), 14 Ohio St. 2d 121.

The Lutheran Senior City case involved a building providing services for 285 residents, the majority of the rooms being single, with some 2-room units for couples. There was also a care and nursing area with single rooms and 2-bed and 4-bed wards. There were no self-contained units. All dining was in a central dining area except for bedfast residents.

The Crestview case involved a 170-unit apartment for people over 65 years of age, under a guaranteed life care plan and a hospital and nursing care center. Residents were required to pay a monthly fee for food and service, and an admittance fee of $10,000.

The decision in the Lutheran Senior City case, supra, simply stated that: "The operative facts in the instant case are substantially the same as those in the case of Philada Home Fund v. Board of Tax Appeals, 5 Ohio St. 2d 135. * * *" In overruling the Lutheran Senior City case by the Carmelite case, supra, it is stated at page 45 as follows: "Since the facts in the Lutheran Senior City case should have been distinguished from the Philada Home Fund case, as we do in this case, we overrule our decision in the Lutheran Senior City case."

We have difficulty in distinguishing the operative facts of the Philada Home Fund case from those in the Lutheran Senior City case, the Crestview case, or the Carmelite case. We have even more difficulty in distinguishing the facts of the instant case from those in the prior Philada Home Fund case. We are, however, bound by the determination of the Supreme Court that the operative facts in the prior Philada Home Fund case must be distinguished from those in the Carmelite case, the Lutheran Senior City case, and the Crestview case, supra.

Cogent reasons for a different result are contained in the dissenting opinion in the Philada Home Fund case, supra, at page 140 et seq.

The majority decision in the prior Philada Home Fund case apparently recognizes the charitable purpose of appellant but denied tax exemption because its property was not used exclusively for charitable purposes. At page 137, it is stated:

> "The charitable purpose of the non-profit corporation which owns this housing and holds it for rent only to aged and needy persons at or below cost may be admitted, but the exemption is claimed under Section 5709.12, Revised Code, which extends exemption only to property 'that is used exclusively for charitable purposes.' The only use of this property is for private residential housing. A long line of Ohio cases hold that property partly or incidentally used for private residence is non-exempt as not used exclusively for charitable purposes. * * *"

In other words, the majority apparently held that the property of appellant was not entitled to tax exemption because a part or incidental use made of the property was for private residence purposes. The same could be said of the properties involved in the Carmelite, Lutheran Senior City, and Crestview cases as well. In each case, the properties involved were partly or incidentally used for private residence purposes, albeit under a boarding house arrangement, rather than a self-contained apartment arrangement.

While we have difficulty in reconciling these cases, we conclude that the distinction must be predicated upon the need for the services provided rather than the mere nature of the services provided. In other words, the homes involved in the other cases may have involved the providing of meals for aged and needy persons unable to cook for themselves, whereas residency in Philada is limited to those who are able to cook for themselves. At least the Supreme Court, in the Carmelite case, emphasized the fact that the home therein involved provided care for its residents in ways they could not care for themselves. While the Philada Home provides limited care for residents in ways they cannot care for themselves, the degree of such care is much more limited than that involved in the other cases.

Although the decision in the Philada Home Fund case, supra, may no longer be determinative of tax exemption in view of the enactment of R. C. 5709.121, we are still bound by that decision in deciding the instant case. Since the operative facts in the record herein are not significantly different from those presented in the prior Philada

Home Fund case, supra, we must conclude that the appellant is not exempt from making contributions to the State Unemployment Compensation Fund.

We, therefore, find that the judgment of the Court of Common Pleas is neither contrary to existing statutory and case law, unreasonable, unconstitutional, nor against the manifest weight of the evidence.

For the foregoing reasons, the judgment of the Court of Common Pleas is affirmed.

TROOP, P. J., and STRAUSBAUGH, J., concur.

Ex. G

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

In Re Appeal of:	C.P. No. 123780
THE PHILADA HOME FUND, INC.	C. App. No. 71-7
THE PHILADA HOME FUND, INC. c/o The Central Trust Company 4th & Vine Streets Cincinnati, Ohio 45201, Appellant,	NOTICE OF APPEAL ON QUESTIONS OF LAW AND ASSIGNMENTS OF ERROR
-vs-	
BOARD OF REVIEW Ohio Bureau of Employment Services 145 South Front Street P. O. Box 1618 Columbus, Ohio 43216, Appellee.	

Appellant, The Philada Home Fund, Inc., hereby gives notice of its appeal to the Court of Appeals of Franklin County, Ohio, from the decision of the Court of Common Pleas of Franklin County, Ohio and the Entry of Affirmance dated December 29, 1970.

Appellant complains of the following errors in said decision and order:

1. The judgment is against the weight of the evidence;

2. The judgment is contrary to law;

3. The judgment is unreasonable;

4. The judgment is unconstitutional under the Ohio and United States Constitution as amended.

PAXTON & SEASONGOOD

By _____

Jon Hoffheimer
1700 Central Trust Tower
Cincinnati, Ohio 45202
381-4188
Attorneys for The Philada Home Fund, Inc.,
Appellant

Ex. H

COURT OF COMMON PLEAS

FRANKLIN COUNTY, OHIO

THE PHILADA HOME FUND, INC. :

Appellant : Case No. 237,830

-vs- : Entry of Affirmance

BOARD OF REVIEW, OHIO BUREAU OF EMPLOYMENT SERVICES, :

Appellee :

On consideration of the record, the Assignments of Error, a certified transcript of the record of the proceedings before the Board of Review herein, together with a certified copy of all exhibits entered into evidence, and the briefs and oral arguments of Appellants and Appellees in this appeal on questions of law, the Court finds that there was no error in the judgment of the Board of Review of the Ohio Bureau of Employment Services prejudicial to the rights of the Appellants, affirming the Administrator's decision on reconsideration, dated August 20, 1968.

WHEREUPON, the Court finds, in accordance with its opinion filed in this matter on December 2, 1970, that the judgment of the Board of Review is not against the weight of the evidence, is not contrary to law, is not unreasonable, and is not unconstitutional under the Ohio and United States Constitution as amended but that the decision of the Board of Review of the Ohio Bureau of Employment Services is sustained by reliable,

probative and substantial evidence, and is reasonable and constitutional and furthermore is in accordance with law.

WHEREFORE, it is ordered that the judgment of the Board of Review of the Ohio Bureau of Employment Services be and it is hereby affirmed.

To all of which Appellant excepts.

s/ Charles Petree
Judge

s/ Jon Hoffheimer
Jon Hoffheimer
Paxton & Seasongood
Attorneys for Appellant

s/ Gust P. Niarchos
Gust P. Niarchos
Attorney for Appellee

Ex. I

Extract from Answer Brief of Appellee in Court of Common Pleas, Franklin County, Ohio:

"In examining the brief of appellant, we see that appellant states that the Constitution was contravened by the fact that the Board of Review denied Philada Home the 'equal protection of the laws' by deciding that Philada was not a charitable institution. Appellant's reasoning is that other homes have been so charitably classified and exempted from taxes and that 'Persons old and needy require that there be furnished to them charitably a place to live and sleep, just as much as that they should have a place to eat and receive medical care.'"

Ex. I

COURT OF COMMON PLEAS

FRANKLIN COUNTY, OHIO

THE PHILADA HOME FUND, INC. :

Appellant :

vs.

BOARD OF REVIEW, OHIO BUREAU OF EMPLOYMENT SERVICES, : Case No. 237,830

Appellee :

DECISION

Rendered this 2nd day of December, 1970.

PETREE, J.

Decision dated November 30, 1970 here on appeal from Board of Review, Ohio Bureau of Employment Services.

The Court has considered oral argument on the briefs of counsel including the cases cited and the decision and record of the case.

The Court commends the purpose of the appellant in carrying out the will of Ada R. Seasongood.

The relief in cases such as is now before the Court must be addressed to the Ohio Legislature.

Section 4141.01, Revised Code (h) does not cover appellant.

The Court finds against the appellant on all four grounds set out in the notice of appeal.

The decisions of the Board of Review of the Ohio Bureau of Employment Services is sustained by reliable, probative and substantial evidence, and is not unreasonable nor unconstitutional and furthermore it is in accordance with law.

Appeal dismissed.

s/ Charles R. Petree
Judge

APPEARANCES:

Jon Hoffheimer
Attorney for Appellant

Gust P. Niarchos
Assistant Attorney General
Attorney for Appellee

Ex. K

BOARD OF REVIEW
Ohio Bureau of Employment Services
145 South Front Street
P. O. Box 1618
Columbus, Ohio 43216

In re appeal of:

PHILADA HOME FUND, INC.
c/o Central Trust Company
Fourth and Vine Streets
Cincinnati, Ohio 45201

UCO Account No. 294750

DECISION

By decision on reconsideration, dated August 20, 1968, the Administrator affirmed the determination dated May 31, 1968, which held that Philada Home Fund, Inc. incurred liability as an employer subject to the provisions of the Ohio unemployment compensation law, effective April 1, 1965. On September 9, 1968, an appeal was filed with the Board of Review.

Pursuant to due notice, the appeal was heard before a Referee duly assigned by the Board to conduct such hearing for and on its behalf, on December 17, 1968, at Cincinnati, Ohio.

Appearances:
Philada Home Fund, Inc., represented by Jon Hoffheimer, Attorney, with three witnesses.

Administrator, Ohio BES, represented by Gust P. Niarchos, Assistant Attorney General.

Further hearing, again pursuant to due notice, was held on March 25, 1969, at Cincinnati, Ohio. Philada Home Fund, Inc. was represented by Jon Hoffheimer, Attorney, and the Administrator, Ohio BES, was represented by Gust P. Niarchos, Assistant Attorney General.

Depositions of Fred Goldman, M.D., and Stanley L. Block, M.D., taken before a notary public for the State of Ohio, are included in the record.

The Board of Review makes its decision on the basis of the entire record.

FINDINGS OF FACT:

Philada Home Fund, appellant herein, is a non-profit Ohio corporation, exempt from income tax under Section 501 of the Federal Internal Revenue Code. A fund administered by the corporation was provided under the terms of the will of Ada R. Seasongood. A 20-unit apartment building in Cincinnati, Ohio was completed early in 1965, with eight of the units designed for occupancy by couples and 12 for occupancy by one person. An addition is scheduled to be completed during the summer of 1969, providing 10 single and four double units. To be accepted for residence, an applicant must be financially needy and 65 years of age or over (an exception was made in one instance by accepting a 61 year old man because he was blind). Also, for acceptance, applicants must undergo a physical examination by a physician who certifies that in his opinion, the applicant is physically and mentally able to manage housekeeping in Philada Apartments. (Appellant's Exhibit #1)

One occupant was required to leave when he became physically unable to take care of himself. Rental is on a month-to-month basis at monthly rates of $60.00 for a single unit and $75.00 for a double unit, including utilities except electricity. In two instances, occupants have been unable to pay the full rental and the difference has been made up by subvention from the fund. The rental amount is not intended to cover the cost of operation and depreciation and a deficit has been incurred in each year of operation thus far. Apartments are unfurnished except for a refrigerator, a stove and carpeting.

Architecturally, the apartment building is designed to meet the needs of aged persons. Some of the special features are: all living quarters and other facilities for use of residents are on one floor, with doors wide enough to permit the use of wheel chairs; non-slip floors; electric outlets, switches, window controls, kitchen cabinets, etc., at a height which requires neither stooping nor climbing; bathrooms equipped with a sliding door to prevent blocking of the door in the event someone falls against it; grab bars at strategic locations in the bathroom with an alarm button placed low enough to be reached by a person who has fallen to the floor. The alarm system rings a buzzer in the manager's office and lights a light indicating the number of the apartment where help is needed and also lights a light over the entrance door to the apartment. A laundry room is provided with coin operated washers and driers and includes a table and chairs for use of the residents while doing laundry.

A room complete with kitchen facilities,

with room for up to 60 people is available for residents for such use as parties and receptions. A smaller lounge is also available and a small garden is provided for each unit. Parking space is provided for residents who have automobiles. With a few exceptions, the residents have not been engaged in gainful employment.

The manager, who has held the position since the completion of the building, is salaried and has been assisted by her husband who is paid on an hourly rate basis. He has outside employment. An office worker has also been paid on a salary basis and at times a gardener and temporary help have been engaged. No services are provided which would require a licensed nurse, registered or practical. The manager was formerly a licensed practical nurse in another state but has not been licensed in Ohio. The manager or an assistant is on the premises at all times. An oxygen tank is kept in the manager's office and all residents are instructed in its use. The manager makes a practice of learning the habits of the residents and makes frequent checks to see that they are all right. The residents come and go as they please, but it is understood that the manager will be kept informed as to their whereabouts. They do their own cooking but the manager, aware that aged people often do not have a proper diet, tries to discreetly observe their eating habits and to bring about needed changes. She also does small personal services for some of the residents, such as using her automobile to take them shopping or doing shopping for them and helping a person with arthritis to dress.

REASON:

Issue: liability for contributions to the Ohio unemployment compensation fund; exemption as organization confining its activities exclusively to rendition of services for its exclusively charitable purposes.

Section 4141.01 (A), Revised Code of Ohio, provides:

> "(A) 'Employer' means any individual or type of organization including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, * * * who * * * had in employment three or more individuals at any one time within a calendar year.
>
> * * *
>
> (B) 'Employment' means service performed for wages under any contract of hire, written or oral, express or implied, * * *"

It is not disputed that the appellant is a non-profit corporation and had three or more individuals performing services for remuneration under a contract of hire. Clearly, contributions are due as found by the Administrator unless the services performed fall within a statutory exemption. It is contended by the appellant that the services are exempt from the definition of "employment" under the provisions of Section 4141.01 (B)(2)(h), Revised Code, which provides:

> "(2) 'Employment' does not include:
>
> * * *

(h) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefits of any private shareholder or individual, and the activities of which are confined exclusively to the rendition of service, or the production of commodities for its respective religious, charitable, scientific, literary, or educational purposes;"

The second syllabus in the decision of the Supreme Court of Ohio in Carmelite Sisters, St. Rita's Home V. Board of Review, 18 Ohio St. 2d 41, states:

"A corporation not for profit which operates a home caring for the aged and infirm is not an 'employer,' under Section 4141.01 (A), Revised Code, liable to contribute to the Unemployment Compensation Fund."

In the Carmelite decision, the court in reversing all lower decisions, reviewed its decisions in several cases involving exemption from real property taxation of property claimed to be used exclusively for charitable purposes. Among these cases were Philada Home Fund v. Board of Tax Appeals, 5 Ohio St. 2d 135. The court distinguished the Carmelite case on the facts and did not disturb the finding that the Philada Home was

used for private residential purposes and was not used exclusively for charitable purposes. The Philada decision cited and followed a long line of Ohio cases holding that property partly or incidentally used for private residence is non-exempt as not used exclusively for charitable purposes. The charitable purpose of the non-profit corporation was not questioned. The syllabus in Philada states:

> "Real property owned by a non-profit charitable corporation the stated purpose of which is to secure and operate resident apartments for aged and needy persons is not exempt from taxation under Section 5709.12, Revised Code, even though it is shown that the rent intended to be charged is at or below cost, and in no event to result in a profit, and that it is expected that some persons unable to pay the full rental will be assisted by subventions from corporate funds."

Other cases considered in Carmelite which have particular being on the instant case are, In re Exemption of Real Property from Taxation by Lutheran Senior City, 9 Ohio St. 2d 151, and Crestview, Inc. V. Donahue, 14 Ohio St. 2d 121. In each instance, the court overruled its previous decision denying exemption from real property taxation of property used in caring for the aged and infirm. Carmelite makes it clear that to qualify for exemption as a home caring for the aged and infirm, the care provided must be that which the resident or patient is unable to provide for himself. The Carmelite decision includes the following with respect to Philada:

> "In summary, the Philada Home was not used exclusively for charitable purposes since it did not care for its residents in ways they could not care for themselves."

The Lutheran Senior City decision was overruled in Carmelite because the facts were almost identical to Carmelite and should have been distinguished from Philada.

In overruling the holding in the Crestview case that a 170-unit apartment for people over 65 years of age, operated by a non-profit corporation, was not exempt from real property taxation, the Carmelite decision states:

> "The opinion in the Crestview case reveals that residents of the apartment units were required to pay a fee for food and that a guaranteed life-care plan was part of the contract with every resident."

(The Crestview opinion also revealed that residents paid a $10,000.00 admittance fee.)

Counsel for the appellant contents that the sustaining of the Philada decision in the Carmelite case has no application in the unemployment compensation case before the Board of Review, because the charitable exemption from real property tax is based on use of the property involved and charitable exemption from unemployment compensation taxes is based on services performed for remuneration by individuals. The contention must fail because all of the services performed by the individuals whose services are in issue herein were

performed in the operation of the home and cannot be services performed in the employ of an organization entitled to exemption unless the Philada Home is operated exclusively for charitable purposes.

It is also contended that the Philada real property tax case was decided by the Ohio Supreme Court before the home was in actual operation and that in its operation, the home is in fact a home caring for the aged and infirm, operated by a corporation not for profit and, therefore, under the second syllabus in the Carmelite case, the corporation is not liable for contributions to the unemployment compensation fund. Assuming that the question of charitable operation must be decided on the facts shown to exist by the record of the instant case, let us consider the evidence as to the operation of the home.

To be accepted as a resident at Philada Home and to continue as a resident, an individual must be physically and mentally able to manage housekeeping. The unquestionably worthy purpose of the Philada Home is to enable aged, needy individuals to maintain an independent existence for as long as possible, to avoid the necessity for institutionalized care which is likely to be at public expense. Certainly there is an element of charity in such an operation. However, for exemption, services must be rendered in connection with activities which are exclusively charitable and the Supreme Court of Ohio in the Carmelite case has reaffirmed its decision that property used for private residence is not used exclusively for charitable purposes. Although

some personal services are provided by the Philada Home staff which would not usually be furnished to tenants of apartment buildings, such services do not constitute the type and quantity of services provided by a home such as the one in the Carmelite case nor is there any life-care contract and food service provision such as is found in the Crestview operation. Rather, the extra services at Philada are in line with the purpose to enable the tenants to maintain a private residence. In view of the Carmelite decision, it cannot be held that the Philada Home, operating apartments used for private residence is operated as a home caring for the aged and infirm. The activities of the home are not confined exclusively to the rendition of services for charitable purposes. Remuneration for services performed by individuals in the operation of the Philada Home is subject to contributions to the Ohio unemployment compensation fund.

DECISION:

The Administrator's decision on reconsideration, dated August 20, 1968, is hereby affirmed.

BOARD OF REVIEW

s/ Willard D. Campbell
Chairman

Date of Mailing:
July 25, 1969

s/ J. Bruce Blanchard
Member

s/ Philip E. O'Day
Member

JCB:ar

An appeal from this decision may be filed in the Court of Common Pleas of Franklin County, Ohio, within thirty (30) days after the date of mailing, in the manner set forth in Section 4141.26, Revised Code of Ohio.

Ex. L.

JAMES A. RHODES, Governor

WILLARD P. DUDLEY, Administrator

OHIO BUREAU OF EMPLOYMENT SERVICES

145 SOUTH FRONT STREET P.O. BOX 1618

COLUMBUS, OHIO 43216

IN REPLY REFER TO

Account No. Z94736

Philada Home Fund (Inc.)
c/o Central Trust Co.
4th & Vine Streets
Cincinnati, Ohio 45201

RECONSIDERATION OF ADMINISTRATOR'S DECISION

On May 31, 1968, a Determination of Employer's Liability was mailed to Philada Home Fund (Inc.) finding that liability was incurred under the Ohio Unemployment Compensation Law effective April 1, 1965.

A request for reconsideration of this determination, postmarked June 17, 1968, has been received and pursuant to your request, the matter has been reviewed and reconsidered.

Section 4141.01 (A) of the Ohio Unemployment Compensation Law provides:

> " 'Employer' means any individual or type or organization including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bank-

ruptcy, trustee, or the successor thereof, or the legal representative of a deceased person who subsequent to December 31, 1936, had in employment three or more individuals at any one time within a calendar year."

Section 4141.01 (B) (2) (h) of the Ohio Unemployment Compensation Law also provides:

"Employment does not include service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefits of any private shareholder or individual, and the activities of which are confined exclusively to the rendition of service, or the production of commodities, for its respective religious, charitable, scientific, literary, or educational purposes."

For organizations such as yours to be excluded under the Ohio Unemployment Compensation Law, it must be shown that you are organized and operate exclusively for charitable purposes.

Upon recommendation, it has not been shown that you are organized or operate exclusively for charitable purposes. Therefore, the determination issued on May 31, 1968, is hereby affirmed.

WILLARD P. DUDLEY,
Administrator

By: Raymond G. Cox, Chief
Contribution Department

Mailing Date:
August 20, 1968

This reconsidered decision shall become final unless within thirty days after the mailing of this notice, an application for review of the decision is filed with the Board of Review.

via certified mail

cc: Paxton & Seasongood - Attorneys

Ex. M

OHIO REVISED CODE, Section 4141.01, Bureau of employment services; administrator and employees, Volume 132 Ohio Laws 237.

As used in sections 4141.01 to 4141.46, inclusive, of the Revised Code, unless the context otherwise requires:

* * *

(B)(2) "Employment" does not include:

(h) * * * Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefits of any private shareholder or individual, and the activities of which are confined exclusively to the rendition of service, or the production of commodities, for its respective religious, charitable, scientific, literary, or educational purposes.

OHIO REVISED CODE, Section 5709.12. Exemption of property used for charitable purposes, Vol. 132 Ohio Laws 207.

Lands, houses, and other buildings belonging to a county, township or municipal corporation and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes shall be exempt from taxation. Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation. All property owned and used by a

non-profit organization exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code, shall also be exempt from taxation. Provided, however, that taxes which became a lien on the real property of the applicant, prior to January 1, 1967, shall not be remitted.

Ex. N

Toledo Retirement Living v. Board of Tax Appeals (1971), 27 Ohio St. 2d 255

1. The General Assembly has exclusive power to choose the subjects, and to establish the criteria, for exemption from taxation. After the General Assembly has marked a specific use of property for exemption and has established the criteria therefor, the function of the judicial branch is limited to interpreting and applying those criteria.

2. In order to qualify its property for exemption from taxation, an institution which characterizes itself as a public charity, but whose purpose is to provide a "home for the aged," must meet the criteria therefor adopted by the General Assembly.

(No. 70-639 - Decided July 21, 1971.)

Above case refers to the Carmelite Sisters as not being an employer, under Title 41, R.C. 4141.01 (A) and 4141.01 (B)(2)(h) and to R.C. (Title 57) 5709.12 and 5701.13, as "also" allowing exemption from taxation.

Ex. O

Carmelite Sisters, St. Rita's Home, v. Board of Review, 18 Ohio St. 2d 41

1. The care of the aged and infirm by a home operated by a corporation not for profit constitutes " * * * activities * * * confined exclusively to the rendition of service * * * for its * * * charitable * * * purposes" under Section 4141.01 (B) (2) (h), Revised Code. (Philada Home Fund v. Board of Tax Appeals, 5 Ohio St. 2d 135, distinguished; paragraph two of the syllabus in Vick v. Cleveland Memorial Medical Foundation, 2 Ohio St. 2d 30, approved and followed; In re Exemption of Real Property From Taxation by Lutheran Senior City, 9 Ohio St. 2d 151, overruled; Crestview Inc., v. Donahue, 14 Ohio St. 2d 121, overruled except as to the undeveloped meadow, the small golf course and the residence of the director.)

2. A corporation not for profit which operates a home caring for the aged and infirm is not an "employer," under Section 4141.01 (A), Revised Code, liable to contribute to the Unemployment Compensation Fund.

(No. 68-161 - Decided April 30, 1969.)

Ex. P

EXTRACT

FROM APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION IN OHIO SUPREME COURT

	Page No.
ARGUMENT	4-10
I. IT IS UNCONSTITUTIONAL AS TAKING PROPERTY WITHOUT DUE PROCESS OF LAW AND DENYING THE EQUAL PROTECTION OF THE LAWS TO DENY EXEMPTION TO A NONPROFIT CORPORATION PROVIDING A RESIDENCE AND SERVICES TO AGED AND NEEDY INDIVIDUALS WHILE GRANTING EXEMPTION TO OTHER, SOMEWHAT SIMILAR INSTITUTIONS	4,5
State ex rel. Hostetter v. Hunt, 132 Ohio St. 568 (1937)	4
Graf v. Warren, 10 Ohio St. 2d 32 (1967)	4
Fourteenth Amendment, United States Constitution	5
Sections 1 and 19, Article I, Ohio Constitution	5

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Supreme Court, U.S.
FILED
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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 805

THE PHILADA HOME FUND, INC.
c/o The Central Trust Company
Fourth and Vine Streets
Cincinnati, Ohio 45202 *Appellant,*

vs.

BOARD OF REVIEW
BUREAU OF EMPLOYMENT SERVICES
145 South Front Street
P. O. Box 1618
Columbus, Ohio 43215 *Appellee.*

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS

WILLIAM J. BROWN,
Attorney General of Ohio,

JOSEPH M. HOWARD,
Executive Assistant to the Attorney General,

P. Michael DeAngelo,
Assistant Attorney General,

James E. Uprichard, Jr.,
Assistant Attorney General

State House Annex
Columbus, Ohio 43215

Counsel for Appellee,
Board of Review,
Bureau of Employment Services

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 805

THE PHILADA HOME FUND, INC.

Appellant;

vs.

BOARD OF REVIEW

—

BUREAU OF EMPLOYMENT SERVICES

Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS

The Attorney General of Ohio, on behalf of the appellee, Board of Review, Bureau of Employment Services, moves the Court to dismiss the appeal filed by appellant in the above captioned case.

STATEMENT

This case originated when the Administrator of the Ohio Bureau of Employment Services made an initial determination that Philada Home Fund, Inc. is an employer under the provisions of Section 4141.01, *et seq.*, Ohio Revised Code, and liable to contribute to the Unemployment Compensation Fund. The appellant filed an administrative appeal from the initial determination. The Administrator's Reconsidered Decision (J. S. Appendix 41, 42, 43) affirmed the initial determination and stated that Philada Home Fund, Inc. was not exempt under Section 4141.0 1(B)(2)(h), Ohio Revised Code, as it existed prior to amendment on October 29, 1971 (Appendix A, page 8.)

From the Administrator's Reconsidered Decision the case was appealed to the Board of Review, Ohio Bureau of Employment Services. The issue argued at the Board of Review stage is basically the same issue presented by the appeal pending in this court, namely whether appellant is a member of the class entitled to exemption from the Ohio Unemployment Compensation Law as provided in Section 4141.01(B)(2)(h), Ohio Revised Code, as it existed prior to amendment on October 29, 1971. The Board of Review, Ohio Bureau of Employment Services affirmed the Administrator's decision that Philada Home Fund, Inc. was not entitled to an exemption under Section 4141.01(B)(2)(h), Ohio Revised Code, as it existed prior to amendment on October 29, 1971, as Philada Home Fund, Inc. was not organized and operated exclusively for charitable purposes.

A statutory Notice of Appeal was filed in the Common Pleas Court of Franklin County, Ohio by appellant. The Common Pleas Court affirmed the decision of the Board of Review, Ohio Bureau of Employment Services that Philada Home Fund, Inc. is not entitled to an exemption from the Ohio Unemployment Compensation Law under the provisions of Section 4141.01(B)(2)(h), Ohio Revised Code, as it existed prior to amendment on October 29, 1971; the Court further found that the decision of the Board of Review was based on reliable, probative and substantial evidence and that said decision was not unconstitutional under the Ohio or United States Constitutions as amended (J. S. Appendix 25, 26.)

The decision of the Common Pleas Court was affirmed by the Court of Appeals of Franklin County, Ohio (J. S. Appendix 10, 11.) The Supreme Court of Ohio dismissed the appeal *sua*

sponte as no substantial constitutional question was presented (J. S. Appendix 6.)

It should be noted by this Court that Section 4141.01(B)(2)(h), Ohio Revised Code, was recently amended effective October 29, 1971, and is now denominated as Section 4141.01(B)(3)(h), Ohio Revised Code, (Appendix B , page 9), and for clarity the new amendment must be read together with the newly enacted Section 4141.01 (B) (2) (b), Ohio Revised Code, effective October 29, 1971, (Appendix C, page 10).

The effect of the new amendments as cited above is to eliminate the statutory exemption which is at issue in this case for all services performed after January 1, 1972. Therefore, the issue in this case is narrowed to the time period prior to January 1, 1972.

ARGUMENT

Appellant's basic argument draws into question the validity of a statutory classification under Ohio Law as construed by the Supreme Court of Ohio and contends that said statutory classification as construed is a violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

This court has often stated the principal that there is no denial of equal protection provided that the statutory classification as construed is neither capricious nor arbitrary but rather is based on reason and proper policy considerations and is free from invidious discrimination. *Brown-Forman Co. v. Kentucky*, 217 U.S. 563; 30 S. Ct. 578 (1910). *Dandridge v. Williams*, 397 U.S. 471, 90 S. Ct. 1153 (1970). *Richardson v. Belcher*, 40 U.S. L. W. 4015 (U.S. Nov. 23, 1971).

Appellant's exclusion from the exemption provided in Section 4141.01(B)(2)(h), Ohio Revised Code (Appendix A, page 8), was predicated on facts which demonstrated that Philada Home Fund, Inc. was not organized and operated *exclusively* for charitable purposes. Those same facts had already been litigated in the Supreme Court of Ohio.

The prior action, *Philada Home Fund v. Board of Tax Appeals*, 5 Ohio St. 2d 135 (1966), involved a different tax exemption statute, Section 5709.12, Ohio Revised Code, and a different instrumentality of the State of Ohio as appellee, but the factual issue in the prior case is essentially identical to the factual issue in the present action.

Both the prior and the present action involve tax exemption statutes whose principle requirement is that the entity claiming the exemption be *exclusively* charitable. In the present action Philada Home Fund, Inc. claimed an exemption from the unemployment compensation tax under Section 4141.01(B)(2)(h), Ohio Revised Code, which, at that time, exempted "* * * services performed in the employ of a corporation, * * * organized and operated *exclusively* for charitable, * * * purposes, * * *," while in the prior action Philada Home Fund, Inc. claimed an exemption under Section 5709.12, Ohio Revised Code, which, at the time the action was pending, exempted from property tax "Real and tangible personal property belonging to institutions that are used *exclusively* for charitable purposes * * *." (Emphasis added.) Although the exemptions appear in different statutes and exempt different items, those differences are not material as the substance of each exemption is that the entity claiming the exemption be *exclusively* charitable.

Philada Home Fund, Inc. is now, as it was at the time of the prior case in 1966, not exclusively charitable. The Supreme Court of Ohio in commenting on the nature of Philada Home Fund, Inc., in the case of *Philada Home Fund v. Board of Tax Appeals, supra,* said, at page 137, that:

> "The charitable purpose of the nonprofit corporation which owns this housing and holds it for rent only to aged and needy persons at or below cost may be admitted, but the exemption is claimed under Section 5709.12, Revised Code, which extends exemption only to property 'that is exclusively for charitable purposes.' The only use of this property is for private residential housing."

The Court stated further, at page 138, that:

> "Our decision in this case is buttressed by the holding in *County of Douglas v. OEA Senior Citizens, Inc.,* 172 Neb. 969, 707, 111 N.W. 2d 719, wherein the court stated: '* * * No definition of charity in any available lexicon is sufficient upon which to declare what has been described in this record as exclusively charitable, that is that the furnishing of low-cost housing at its real cost is charitable.' "

Appellee contends that the prior *Philada* case, *supra,* compels the application of the doctrine of collateral estoppel as to the issue of whether Philada Home Fund, Inc. is exclusively charitable. As enunciated by this Court in *Ashe v. Swenson,* 397 U.S. 436, 90 S. Ct. 1189 (1970), once an issue of ultimate fact has been decided between two parties, that factual issue cannot be relitigated by those same parties in a future action. The factual issue whether Philada Home Fund, Inc. was exclusively charitable was litigated between appellant and the State of Ohio in a prior action, *Philada Home Fund v. Board of Tax Appeals, supra,* and appellant did not appeal that decision.

Appellee further contends that Philada Home Fund, Inc., was specifically distinguished by the Supreme Court of Ohio from others who were exempted under the provisions of Section 4141.01(B)(2)(h), Ohio Revised Code, in the case of *Carmelite Sisters, St. Rita's Home v. Board of Review,* 18 Ohio St.2d 41 (1969), reprinted in its entirety at Appendix D, pages 11–15).

Appellant accurately quotes and heavily relies upon the second syllabus of the *St. Rita's Home* case, *supra,* (J.S. 9, 10). However, appellant fails to mention that Philada Home Fund, Inc. was distinguished by the Court from the application of that syllabus. The Court stated, at page 43–44, that;

> "To sustain the Home's (St. Rita's) contention we must find that the care of the aged and infirm by a home operated by a corporation not for profit constitutes '* * * activities * * * confined exclusively to the rendition of service * * * for its * * * charitable * * * purposes.' Section 4141.01(B)(2)(h), Revised Code. The board (Board of Review, Bureau of Employment Services) contends that *Philada Home Fund v. Board of Tax Appeals,* 5 Ohio St.2d 135, is controlling here and compels us to reject the Home's contention. That case held that the real property of a nonprofit corporation which was used for apartments for aged and needy persons was not used exclusively for charitable purposes and was not exempt from real property taxation. The *Philada Home Fund* case may be distinguished on its facts from the instant case, and we hold that a corporation not for profit which operates a home *caring* for the aged and infirm is *not* an employer, under Section 4141.01(A), Revised Code, liable to contribute to the Unemployment Compensation Fund.

> "In *Philada Home Fund v. Board of Tax Appeals, supra,* apartments built and operated by a nonprofit corporation were offered for rent to 'aged and needy self-respecting persons of good character,' with preference given to couples over individuals. *No services were provided for the residents of the Philada Home, other than those provided to a lessee of any age in any apartment building.* It does not appear that Philada Home had a doctor on call at all times, or a registered nurse and two practical nurses on its staff as does the Home in the instant case. Nor did the Philada Home provide meals, dietary or other treatment and care for its residents. *In summary, the Philada Home was not used exclusively for charitable purposes since it did not care for its residents in ways they could not care for themselves."* (Emphasis added.)

Furthermore, in the *St. Rita's* opinion, *supra,* the Supreme Court of Ohio overruled two of its prior decisions which involved the property tax exemption provided in Section 5709.12, Ohio Revised Code; the decisions overruled were *In re: Exemption Real Property from Taxation by Luthern Senior City,* 9 Ohio St.2d 151 (1967) and *Crestview v. Donahue,* 14 Ohio St. 2d 121 (1968). Both cases were based on the authority of *Philada Home Fund v. Board of Tax Appeals, supra.* The Court determined that in the light of its decision in the *St. Rita's* case, *supra,* Crestview, Inc. and Luthern Senior City are exempted under Section 5709.12, Ohio Revised Code, but the Court did not overrule *Philada Home Fund v. Board of Tax Appeals, supra.* The Court obviously treated the requirement that an entity claiming exemption must be exclusively charitable to be the same requirement under Section 5709.12, Ohio Revised Code, as under Section 4141.01(B)(2)(h), Ohio Revised Code, and using the criteria of services provided, the Court properly distinguished Philada Home Fund, Inc. from the other members of the exempt class.

Appellee further contends that the Notice of Appeal filed by appellant in this Court (J.S. Appendix 1–3) contains federal questions which were not argued or passed on by any Court below. Specifically, questions 2 (a) and 2 (b) of appellant's Notice of Appeal raise issues decided in *Philada Home Fund v. Board of Tax Appeals, supra,* and not previously raised in the instant case. Appellant had ample opportunity to appeal these precise questions when the Supreme Court of Ohio decided *Philada Home Fund v. Board of Tax Appeals, supra,* and appellant chose not to appeal that decision.

Appellee further contends that appellant has failed to comply with the rules of this Court in that, contrary to Rule 15 (d), appellant has failed to point with specificity to those portions of the record which reveal the method of raising and disposing of the federal question sought to be reviewed.

CONCLUSION

The exclusion of Philada Home Fund, Inc. from membership in the exempt class provided in Section 4141.01(B)(2)(h), Ohio Revised Code, is rationally based and free from invidious discrimination. There is no substantial constitutional issue raised by appellant. Therefore, appellee respectfully requests this Court to grant appellee's Motion to Dismiss.

Respectfully submitted,

WILLIAM J. BROWN,
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CERTIFICATE OF SERVICE

I, Joseph M. Howard, Executive Assistant to the Attorney General of the State of Ohio, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the day of February, 1972, I served three copies of the foregoing Motion to Dismiss, by first class mail, postage prepaid, upon counsel for appellant, Murray Seasongood, 1700 Central Trust Tower, Cincinnati, Ohio 45202.

JOSEPH M. HOWARD
Executive Assistant to
the Attorney General

APPENDIX A

The relevant provision of the Ohio Revised Code, Section 4141.01(B)(2)(h), as it existed prior to amendment on October 29, 1971, providing for a charitable exemption under the Unemployment Compensation Law states that:

(B)(2) "Employment" does not include:

* * *

(h) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefits of any private shareholder or individual, and the activities of which are confined exclusively to the rendition of service, or the production of commodities, for its respective religious, charitable, scientific, literary, or educational purposes.

APPENDIX B

The relevant provision of the Ohio Revised Code, Section 4141.01 (B)(2)(h) as amended, on October 29, 1971and newly denominated as Section 4141.01(B)(3)(h), Ohio Revised Code:

(B)(3) "Employment" does not include:

* * *

(h) Service performed prior to January 1, 1972, in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefits of any private shareholder or individual, and the activities of which are confined exclusively to the rendition of service, or the production of commodities, for its respective religious, charitable, scientific, literary, or educational purposes.

Service Performed After December 31, 1971:

(i) in the employ of a church or convention or association of churches, or in an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(iii) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work.

APPENDIX C

The relevant provision of the Ohio Revised Code, Section 4141.01(B)(2)(b) as newly enacted on October 29, 1971:

(B)(2) "Employment" includes:

* * *

(b) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act", 84 Stat. 713, 26 U.S.C.A. 3301, solely by reason of Section 26 U.S.C.A. 3306(c)(8) of that act and is not excluded under Division(B)(3) of this section.

APPENDIX D

Opinion and Decision of
the Ohio Supreme Court

Carmelite Sisters, St. Rita's Home, Appellant, *v.* Board of Review, Bureau of Unemployment Compensation, Appellee.

1. The care of the aged and infirm by a home operated by a corporation not for profit constitutes "* * * activities * * * confined exclusively to the rendition of service * * * for its * * * charitable * * * purposes" under Section 4141.01(B)(2)(h), Revised Code. (*Philada Home Fund* v. *Board of Tax Appeals,* 5 Ohio St. 2d 135, distinguished; paragraph two of the syllabus in *Vick* v. *Cleveland Memorial Medical Foundation,* 2 Ohio St. 2d 30, approved and followed; *In re Exemption of Real Property From Taxation by Lutheran Senior City,* 9 Ohio St. 2d 151, overruled; *Crestview, Inc.,* v. *Donahue,* 14 Ohio St. 2d 121, overruled except as to the undeveloped meadow, the small golf course and the residence of the director.)
2. A corporation not for profit which operates a home caring for the aged and infirm is not an "employer", under Section 4141.01(A), Revised Code, liable to contribute to the Unemployment Compensation Fund.

(No. 68-161—Decided April 30, 1969.)

Appeal from the Court of Appeals for Franklin County.

The Administrator of the Bureau of Unemployment Compensation determined that appellant, Carmelite Sisters, St. Rita's Home, was an employer under Section 4141.01(A), Revised Code, liable to contribute to the Unemployment Compensation Fund.

The home for the aged and infirm, now known as St. Rita's Home for the Aged, was originally built by a real estate development corporation and operated as a proprietary rest home by a subsidiary of the development corporation. In 1964, the Roman Catholic Diocese of Columbus purchased the home and furnishings and placed it under the direction of members of the Carmelite Sisters of the Aged and Infirm until September 1965.

On September 16, 1965, St. Rita's Home for the Aged, Inc., a corporation not for profit, was incorporated, and the real property, furniture, fixtures and equipment transferred by the diocese to the corporation. Under its articles of incorporation, St. Rita's Home for the Aged, Inc., is organized to establish, maintain and operate a home for indigent and aged men and women and to provide for their welfare and comfort. The sole criteria for admission to the home is that the applicant must be 65 years of age or older and *have need* for the services rendered by the Home.

St. Rita's Home operates on a break-even budget. Any surplus of revenue over operating costs would be used to improve the home. A majority of the residents pay a monthly charge which not only defrays the cost of their own upkeep but helps to pay the cost of those residents who are unable to pay the full rate.

After the transfer of the property from the diocese to St. Rita's Home for the Aged, Inc. application was made to relieve the home from liability for contributions to the Unemployment Compensation Fund.

The real property owned by the home and bequests to the home have been determined by the Board of Tax Appeals to be used exclusively for charitable purposes, and therefore exempt from taxation.

The Administrator of the Bureau of Unemployment Compensation determined that the services rendered by the home were not exclusively for charitable purposes because the residents paid all or a large part of the cost of their own upkeep and that, therefore, the Home was an "employer", under Section 4141.01(A), Revised Code, liable to contribute to the Unemployment Compensation Fund. That determination was affirmed by the Bureau of Unemployment Compensation Board of Review, the Court of Common Pleas and the Court of Appeals for Franklin County.

The cause is now before this court pursuant to the allowance of a motion to certify the record.

Messrs. Connor, Connor & Bennett and *Mr. John D. Connor,* for appellant.

Mr. Paul W. Brown, attorney general, and *Mr. C. Richard Gregg,* for appellee.

Duncan, J. The question before the court is whether St. Rita's Home, appellant herein, is an "employer", as defined in Section 4141.01(A), Revised Code, required to make contributions to the Unemployment Compensation Fund. The Home contends that it is not an "employer" because it is "* * * organized and operated exclusively for * * * charitable * * * purposes * * * the activities of which are confined exclusively to the rendition of service * * * for its * * * charitable * * * purposes * * *." Section 4141.01(B)(2)(h), Revised Code. The Board of Review, appellee herein, contends that the Home's activities are not "* * * confined exclusively to the rendition of service * * * for its * * * charitable * * * purposes", since all the residents pay something toward their upkeep and a majority of them pay a rate which more than defrays the cost of their own upkeep.

To sustain the Home's contention we must find that the care of the aged and infirm by a home operated by a corporation not for profit constitutes "* * * activities * * * confined exclusively to the rendition of service * * * for its * * * charitable * * * purposes." Section 4141.01(B)(2)(h), Revised Code. The Board contends that *Philada Home Fund* v. *Board of Tax Appeals,* 5 Ohio St. 2d 135, is controlling here and compels us to reject the Home's contention. That case held that the real property of a non-profit corporation which was used for apartments for aged and needy persons was not used exclusively for charitable purposes and was not exempt from real property taxation. The *Philada Home Fund case* may be distinguished on its facts from the instant case, and we hold that a corporation not for profit which operates a home caring for the aged and infirm is not an employer, under Section 4141.01(A), Revised Code, liable to contribute to the Unemployment Compensation Fund.

In *Philada Home Fund* v. *Board of Tax Appeals, supra,* apartments built and operated by a nonprofit corporation were offered for rent to "aged and needy self-respecting persons of good character," with preference given to couples over individuals. No services were provided for the residents of the Philada Home, other than those provided to a lessee of any age in any apartment building. It does not appear that the Philada Home had a doctor on call at all times, or a registered nurse and two practical nurses on its staff as does the Home in the instant case. Nor did the Philada Home provide meals, dietary or other treat-

ment and care for its residents. In summary, the Philada Home was not used exclusively for charitable purposes since it did not care for its residents in ways they could not care for themselves.

The board seeks to distinguish the instant case from the public charitable hospital cases, culminating in *Vick* v. *Cleveland Memorial Medical Foundation,* 2 Ohio St. 2d 30, on the sole ground that the Home is not a hospital. In paragraph two of the syllabus of *Vick* the court said:

"Where a corporation not for profit is operating a hospital for the primary purpose of providing services to those in need, without regard to race, creed, color or ability to pay, the facts that the hospital charges patients who are able to pay for its services and that a surplus has been created in the hospital fund (no part of which has been diverted to a private profit) do not change its essentially charitable nature."

In the years since 1912, when the Ohio Constitution was amended so that exemption from taxation might be granted to "institutions used exclusively for charitable purposes" (instead of "institutions of purely public charity" as previously provided), our concept of charity has changed a great deal. We no longer tolerate the notion that the aged, sick and needy must suffer and die without special care if they cannot afford to pay for it, or if, having money, there is some other reason they cannot obtain it.

Both a sick person in a hospital and a resident in a home for the aged and infirm are there because they need to be cared for when they cannot do so for themselves. The fulfillment of that need for care is the charitable purpose of the hospital in *Vick,* and of the Home in this case. We reaffirm the rationale of paragraph two of the syllabus in the *Vick case* and deem it controlling here.

Because of the foregoing discussion of the *Philada Home Fund case,* we find it necessary to review our decision in *In re Exemption of Real Property From Taxation by Lutheran Senior City,* 9 Ohio St. 2d 151, where, on facts almost identical to those in this case, we affirmed, on the authority of *Philada Home Fund,* a decision of the Board of Tax Appeals denying application for exemption from real property taxation. Since the facts in the *Lutheran Senior City case* should have been distinguished from the *Philada Home Fund case,* as we do in this case, we overrule our decision in the *Lutheran Senior City case.*

We must also reconsider our decision in *Crestview, Inc.*, v. *Donahue* (1968), 14 Ohio St. 2d 121, where we held that a community operated by a nonprofit corporation, affiliated with the Methodist Flower Hospital of Toledo (consisting of a 170-unit apartment for people over 65 years of age, the residence of the director, an undeveloped meadow and small golf course for the use of the residents, and a hospital and nursing care center), was not exempt from real property taxation for the reason that none of the parcels of land were being used exclusively for charitable purposes. The opinion in the *Crestview case* reveals that residents of the apartment unit were required to pay a fee for food and that a guaranteed life-care plan was part of the contract with every resident. Since we take the view that all services connected with the care of the aged and infirm in such a home are for charitable purposes the decision in *Crestview, Inc.*, v. *Donahue, supra,* (14 Ohio St. 2d 121), is overruled, except as to the undeveloped meadow, the small golf course and the residence of the executive director. See *Doctors Hospital* v. *Board of Tax Appeals,* 173 Ohio St. 283; *Western Reserve Academy* v. *Board of Tax Appeals,* 153 Ohio St. 133.

The Board contends that reasons of public policy, such as the encouragement of economic growth, require that liability for contributions to the Unemployment Compensation Fund be spread among the greatest number of employers, including some, at least, who benefit from real property and inheritance tax exemptions because of their charitable purposes. We reject this argument since we adhere to the time-honored rule of statutory construction which decrees that the legislative intent may be inquired into only if the enactment is ambiguous upon its face. There may be good reasons why charitable institutions which are exempt from real property and inheritance taxation should not be exempt from contributing to the Unemployment Compensation Fund, but such reasons are not readily apparent from the statutes creating the various charitable exemptions which are similarly worded.

For the reasons stated, we find that the judgment of the Court of Appeals is contrary to law, and is, therefore, reversed.

Judgment reversed.

Taft, C. J., O'Neill, Schneider and Cole, JJ., concur.

Zimmerman and Matthias, JJ., dissent.

Cole, J., of the Third Appellate District, sitting for Herbert, J.